



Rivers Alliance of Connecticut

TESTIMONY
FOR THE COMMERCE COMMITTEE PUBLIC HEARING
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To: Chairman Sen. Gary LeBeau, Chairman Rep. Jeffrey Berger,
And to the Members of the Committee:

RE RB 1020 AAC Water Resources and Economic Development

Rivers Alliance of Connecticut is the statewide, non-profit coalition of river organizations, individuals, and businesses formed to protect and enhance Connecticut's waters by promoting sound water policies, uniting and strengthening the state's many river groups, and educating the public about the importance of water stewardship. Our 450 members include almost all of the state's river and watershed conservation groups, representing many thousand Connecticut residents.

Thank you for this opportunity to comment on this water resources bill.

Background: Peak Water

The title of the bill correctly reflects the strong link between water resources and economic development. Worldwide, economies are stalling for lack of adequate clean water. Depletion of groundwater in India is notorious and threatens to reverse that nation's economic gains. Here in the U.S., water-poor states and cities are facing reductions in supply, shrinking agriculture, and limits on growth.

In December 2008, Peter Brabeck-Letmathe, chairman of the international food and beverage company Nestlé, wrote in The Economist magazine: "I am convinced that, under present conditions and with the way water is being managed, we will run out of water long before we run out of fuel." The problems in the energy sector associated with peak oil are coming at us just as fast with peak water.

The future has arrived in California, Nevada, Georgia, Texas, and more than 30 other states. The Lake Mead, the giant reservoir created by the Hoover dam, is presently at 42 percent capacity, down approximately 5.6 trillion gallons. This is the water supply for the Las Vegas region. Las Vegas is in trouble. Connecticut can do better, but not if we continue to evade the tough decisions required for sustainable water management. "Sustainable" means that the state will have at least as much high-quality water in the future as it has now.

Those states that have adequate good water are beginning to take steps to guard it from plunder. In 2008, the Great Lakes Compact went into effect as a federal and multi-state law, which includes agreements with Ontario and Quebec. It

forbids any Great Lakes water to be exported outside the region. New England is obviously not as water rich as the Great Lakes states; some areas in Massachusetts, for example, are water stressed. Nevertheless, most of New England, including Connecticut, has ample water. This gives us a much-needed competitive edge in the national and international economy. It also inspires those who control water to tighten their grip.

The purpose of the flow-protection regulation is to assure that Connecticut has enough water going forward and that it is available on a fair basis.

Control of Water in Connecticut: A Monopoly Game

In the years that Connecticut developed an apparently misplaced confidence in the economic advantages of energy deregulation, the state's water policy became increasingly more directive. Department of Public Health (DPH), in particular, aimed at creating a non-competitive pattern of water ownership, with companies assigned exclusive service areas, and with encouragement of utility mergers.

Water utilities in the state are in a favorable position under the status quo. This is one reason international utilities such as Suez and Aquarion do business in Connecticut. Price controls applied by the Department of Public Utility Control (DPUC) to the investor-owned companies tend to limit profits but also to guarantee profits. In a severe recession, that's not bad. Despite revenue losses, due to water-saving appliances and more summer rains, the private utilities can count on a protected customer base and price increases as needed. The public utilities are more exposed in that they do not have DPUC to blame when they need to raise prices. On the other hand, they can sell water without DPUC interference. Plus, they can count on a stable business environment and relatively weak requirements to invest in infrastructure. (For example, DPUC can pressure private companies to fix leaky systems. The municipal and regional utilities are more likely to feel pressure from local officials *not* to fix leaky systems. It is a credit to the many good managers in the water business that infrastructure holds up as well as it does.)

In sum, Connecticut water utilities are protected from competition and control a "product" for which world demand is rising day by day. It is clearly not in their financial interest to give up any water to which they have claim. Even if they have excess water today, they may have customers for it tomorrow. Moreover, the precedent of allowing outside interests to mandate operational rules to protect river flows is offensive to many water suppliers. But these outside interests are people who fish, paddle, picnic by the water, and otherwise love rivers. They want the state's streams and rivers to be just as good for their children.

The Only Answer -- Buy Back Our Water?

Utilities have signaled that they would be more willing to allocate some portion of water for nature and aquatic life if Connecticut would pay for it.

Environmental advocates have signaled that, if it is really a question of money, that can be discussed. But should the public have to buy back its own water?

Are Healthy Rivers an Economic Asset? To Whom?

At Rivers Alliance, we believe the state benefits economically from the millions of dollars that are spent here each year because of our great waterways and recreational opportunities for fishing, boating, swimming, bird watching, and more. Utilities by and large do not profit directly from these benefits. But they do profit indirectly, as the state's quality of life and scenic beauty attract residents (many of whom use large quantities of water for landscaping, by the way).

The Connecticut Business and Industry Association (CBIA) consistently has opposed streamflow protection. So, presumably, their members are not in the tourism and recreation businesses. But this is guesswork. CBIA has given almost no details on which of its members would be affected and what relief they are seeking. The objections of business interests seem to derive mainly from a generalized fear of rate increases and automatic opposition to any regulation that comes out of the Department of Environmental Protection (DEP). These sentiments are understandable but not necessarily a prudent base for policy decisions.

Does It Cost Too Much to Keep Rivers Running?

Utilities' projections of the cost of compliance with the flow regulations range from about \$10 million to about \$100 million. This compares to the known cost of \$4 million for the complex, court-mandated, flow-management construction done in Waterbury; the new releases were on schedule in 2010. Moreover, the Waterbury project included repairs already under order from the DEP, so the flow-specific work would have cost less. Utilities should provide the data on which they base their estimates. So far, all cost estimates seem far too high.

Under the proposed regulation, utilities that have a tight margin of safety would not be required to comply with the regulation for more than 20 years. So a \$10 million capital cost (using the estimate of Wallingford's utility) would come to \$500,000 per year. If a compliance project were to be similar to Waterbury's project, the cost would be under \$200,000 per year. In some places, we believe compliance would require no more than the installation of a siphon. The cost would be negligible.

The regulation incorporates exemptions, variances, and release modifications for hardship cases and droughts. (Golf courses and agriculture are entirely exempt.) As best we can tell, these relief measures are not included in industry's cost calculations.

What's the Real Problem?

The passionate opposition to the proposed flow-protection regulation seems to be not so much due to the estimated cost, which has been extraordinarily exaggerated, or to concerns about adequacy of supply, which the Department of Public Health has declared not be a problem. It arises because utilities and others who have present control of water perceive that something they believe they own is being taken away from them.

Hot Water

We welcome the interest of the Commerce Committee in the question of how to manage the state's water for the well-being of the public, including commercial interests. We need every good mind we can get on this issue. We would be pleased to work with you.

But Bill 1020 plunges into very hot water. It undermines the authority of the Regulations Review Committee, which by statute is charged with evaluating and approving (or not) the regulation. It disrupts the process of negotiation that led up to Public Act 05-142 and then continued in the framing of the regulation (a total span of ten years). Worse, this bill's provisions would greatly strengthen the ability of diverters to run rivers dry without legal recourse for the public.

Asking Too Much

The bill includes just about every provision that has been proposed in order to forestall streamflow protection.

Section 1 (a)

Concurrence. The bill calls for DEP to get concurrence on the regulation from DPH (already done), the Department of Economic and Community Development (DECD), and the Department of Agriculture (there is an exemption for agriculture). This is very late in the process to change the conditions for writing the regulation. Official agency concurrence typically takes months and even years, and can be withdrawn at any point. Connecticut is extremely unusual in having a legislative veto over executive branch regulations. This has led to a prolonged regulatory process. It took 14 years to pass aquifer protection regulation, and, as you know, the spreading contamination of groundwater indicates that the final regulation was excessively weakened. The state should not create more opportunities for blocking reforms to the way it manages water resources.

Repetition and Its Message. The original act calls upon the DEP to take into consideration the "requirements of public health, flood control, industry, public utilities, water supply, public safety, agriculture, and other lawful uses of such waters." The proposed bill says that, in setting release rules, the DEP must consider "public health, safety, agricultural and economic development needs of the state."

The Regulatory Review Committee's LCO report on the revised regulation determined that DEP had met its burden in considering these issues. Even if the Commerce Committee disagrees with that conclusion, what is the point of inserting repetitive language with slight variations that are difficult to interpret? The message seems to be: you did it wrong the first time, do it again. Why not just say that?

Proposed Exemption "where compliance requires the expenditure of resources for the development of new sources of water supplies or storage which is not technically feasible or financially viable. Assuming adequate demand-management (conservation), new sources and new storage may not be needed. But, if needed, technical feasibility is unlikely to be a problem. The point here is whether developing new sources or storage would be "financially viable." Strictly interpreted, that should mean whether compliance would cause bankruptcy. There is a hardship exemption available in such a case. But as likely to be interpreted, it probably means whether compliance would reduce revenue to shareholders or impose unwelcome costs on the utility. These are what Theodore Roosevelt called "weasel words," that is, words that suck the meaning out of the language that precedes them. (Note, this section of new language has a grammar error that confuses the meaning. "Is not technically feasible..." should probably be "are not technically feasible.")

Section 1 (b)

Screening and Classification. The process described here for classification of rivers and streams seems basically to repeat the plan DEP has already announced. Water companies have complained, and we have tended to agree, that the screening process is too slow and the outcome too uncertain. DEP has responded to these complaints by guaranteeing water suppliers that rivers downstream of their reservoirs will be classed as low-quality waters: Class 3 or Class 4 (which is the no-hope Class). No corresponding guarantees have been offered to river advocates. Now that certainty for suppliers is written into the regulation, the language in 1020 calls for the same slow process suppliers previously disliked.

Protecting the Margin of Safety and Public Health Needs. DPH has already determined that the proposed regulation offers no threat to public health and safety. The entire Water Planning Council adopted a resolution to the same effect. (The Council consists of DEP, DPH, DPUC, and the Office of Policy and Management). Occasionally, people say that these agencies only voted reluctantly. That perception is speculative.

Impact on Water Rates and the Anticipated Environmental Benefits from Compliance. Many industry representatives have called for a cost-benefit analysis of the impact of the regulation. Bill 1020 includes a variant of that request. We agree that the impact on water rates is relevant. River advocates have asked utilities for this information. But, as the Committee knows, cost-benefit analyses are controversial when the costs involve loss of life or health. Water is essential to both. It is frequently and aptly described as "invaluable." We would be pleased to participate in developing a Connecticut-specific model for a cost-benefit analysis of high-quality water, whether in streams or in faucets. But meanwhile, we hope the

state will move forward on the reasonable assumption that we need to save some water for the survival of aquatic life and the benefit of future generations of Connecticut residents.

Non-binding Classification. The final sentence in (b) provides grounds for reversing any classification that would actually protect the resource. It essentially demands that all the state's waters be available to water utilities. It forbids the DEP from assigning a high value to any stream "adjacent to or immediately downstream of any public water supply sources." Note that this language introduces protection of streams near well fields. Thus, the utilities are inserting protections for their groundwater sources after insisting that groundwater NOT be covered in the regulation. Again, the grammar slips in this section, but the thrust seems to be that any water that might be useful for economic development or water supply should not be given a protective classification. The point of the regulation is to help the state encourage economic development where appropriate water is available and to discourage water-destructive development. This language reverses that intention, asserting in effect that *all* water everywhere should be available for supply and economic development.

Section 2 (NEW)

No Harm, No Foul. This section provides immediate financial relief for private water companies in case the streamflow regulation is actually approved. The relief work will be started effective July 1, 2011, some 15 years before the projected earliest date of implementation. DPUC is to provide ratemaking mechanisms that allow companies to recoup immediately via rates the cost of complying with a streamflow regulation. Rivers Alliance has already advocated for similar relief to private utilities making infrastructure investments. We have no objection to this provision. But, if it is adopted, the utilities would suffer no harm, and should not cry "foul."

CONCLUSION

Bill 1020 calls for a do-over of a regulatory process that has been in progress for since 2005 and is in its final stage. It includes provisions that would guarantee that the regulation would not satisfy the provisions in the statute. We urge the Committee to reject this bill. We hope the Committee will continue to be interested in helping the state to manage its water resources for the public good.

Thank you for your consideration.

Margaret Miner
Executive Director

